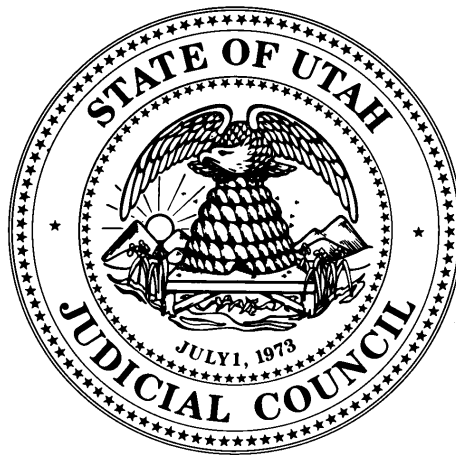

Manual of Procedures for Judicial Nominating Commissions



April 24, 2000

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for
Judicial Nominating Commissions**

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II. List of Utah Judicial Nominating Commissions

Nominating Commission For	Counties Served
Supreme Court and Court of Appeals	All
First Judicial District	Box Elder, Cache, Rich
Second Judicial District	Davis, Morgan, Weber
Third Judicial District	Salt Lake, Summit, Tooele
Fourth Judicial District	Juab, Millard, Utah, Wasatch
Fifth Judicial District	Beaver, Iron, Washington
Sixth Judicial District	Garfield, Kane, Piute, Sanpete, Sevier, Wayne
Seventh Judicial District	Carbon, Emery, Grand, San Juan
Eighth Judicial District	Daggett, Duchesne, Uintah

III. Introduction

Utah judicial nominating commissions serve a critical function. The work of a commission marks the beginning of a process that culminates in the appointment by the Governor and the confirmation by the Senate of a new member of the state judiciary. Service on a judicial nominating commission is, therefore, a serious undertaking. It requires a willingness to devote the time and energy to select the applicant who will most effectively enhance the quality of the bench. It requires the discipline to work in a group and within the confines of a strict timetable. It requires the commitment to proceed through the various steps of the judicial nomination process with care and integrity. While the work of a judicial nominating commission is both concentrated and time consuming, participants will find satisfaction in the knowledge that their work directly improves the quality of Utah's judicial system.

Throughout their thoughtful and impartial deliberations, the commissioners must hold the public interest foremost in the decision making process. The quality of Utah's judiciary rests initially in the nomination of candidates by the commissioners. The commissioners have many applicants from which to choose. Consequently, only extreme diligence by the nominating commission assures that all of the nominees submitted to the Governor will strengthen the state's judiciary.

This manual was developed to assist Utah's judicial nominating commissions by providing a common background of information and by establishing guidelines both for commission procedures and applicant evaluation. Its goal is to enhance the efficiency of the nominating process by resolving procedural issues and preserving the time of the commissioners for a more thorough investigation and evaluation of applicants. It also seeks to articulate the qualifications and some of the more important qualities for judicial office, thus providing practical guidelines for applicant evaluation.

IV. Merit Selection of Judges

The office of judge is unique in our society. A judge is a public servant holding an office of high public trust and so should answer to the public. However, the obligation of a judge is to resolve disputes impartially and base decisions solely upon the facts of the case and the law. A judge, therefore, should be insulated from public pressure.

The federal government and the states balance the competing interests of judicial accountability and judicial independence in a variety of ways. A federal judge, for example, is almost completely insulated from public pressure by serving a life term. There are two basic approaches to judicial selection and retention at the state level. Judges of many states face periodic partisan or nonpartisan elections which force them to act as politicians as well as jurists. Other states, including Utah, have decided to choose their judges by merit selection.

Merit selection was developed as an alternative to the federal system and to state systems requiring that judges run in contested elections, both of which have been criticized as unduly politicizing the judiciary and undermining the integrity of the law. Merit selection plans have been in the process of development in many states since 1913 under the auspices of the American Judicature Society, a non-profit, non-partisan organization formed to improve the judicial selection process. Utah initially developed its merit selection system by statute in 1967 to govern gubernatorial appointments and combined it with nonpartisan, contested elections for retention. The revised Judicial Article of the Utah Constitution, effective July 1, 1985, established merit selection as the exclusive method of choosing a state court judge. Legislation passed in 1994 changed the composition of the nominating commissions and the method of selecting commission members. However, despite the changes in the commission composition and selection, the over arching goal of the system -- the nomination and appointment of the best qualified candidates on a nonpartisan basis -- remains unchanged. As stated in the Utah Constitution: Selection of judges shall be based solely upon consideration of fitness for office without regard to any partisan political consideration.”

There are four steps in the Utah merit selection plan: nomination, appointment, confirmation and retention. The nomination of judges includes several steps preceding the selection of nominees. A commission has 45 days from its first meeting to complete this process. The steps of the nomination process include:

- ◇ the application process;
- ◇ screening of applicants by staff to determine minimum constitutional qualifications for office;
- ◇ the organizational meeting including public testimony;
- ◇ screening of applicants by the commission based only on the application materials;
- ◇ the summary investigation of applicants by staff;
- ◇ investigation of the applicants as determined by the commissioners;
- ◇ the screening of applicants prior to interviews;
- ◇ preparation for the interviews;
- ◇ personal interviews of the applicants;
- ◇ selection of a preliminary list of nominees;
- ◇ public dissemination of the names of the proposed nominees and public comment upon their qualification for office;
- ◇ further investigation of the proposed nominees as determined by the commissioners;
- ◇ final selection of the nominees; and
- ◇ submitting the nominees to the Governor.

The Governor must appoint one of the nominees within thirty days of receiving the nominations, or the appointment authority passes to the Chief Justice of the Supreme Court. The appointee must be confirmed by the Senate within sixty days of the appointment.

If confirmed, the new judge assumes the duties of the bench for three years before facing the first unopposed retention election. In the unopposed retention election, the electorate is asked whether the judge should be retained in office. Thereafter, the term of office of a judge is six years, except for a justice of the

Supreme Court, whose term is ten years. At the end of each term of office, the judge faces another unopposed retention election.

V. Composition of Utah Judicial Nominating Commissions

The Utah nominating commissions are established by the state constitution, and their composition is determined by statute. There are nine judicial nominating commissions in Utah: One commission serves the district and juvenile courts within each of the eight judicial districts. One commission serves the Supreme Court and Court of Appeals. Each commission is responsible for the nomination of judges to fill vacancies occurring within its geographic boundaries. The commissions and the counties they serve are listed at the beginning of this manual.

Each nominating commission is comprised of eight members. For each commission, the Governor selects seven members and designates the chair. At least two members of each commission must be members of the Utah State Bar, and not more than four may be members of the Utah State Bar. Not more than four members of each commission may be of the same political party.

The Chief Justice of the Utah Supreme Court or the designee of the Chief Justice is a non-voting member of each commission. The Chief Justice is a full participant in commission discussions and debate, including the questioning of applicants, but has no vote. References in this manual to commission votes should be interpreted as applying only to the commissioners appointed by the governor. Although not able to vote, in the selection of nominees, the Chief Justice has the statutory responsibility to ensure that the procedures established in this manual and by statute are followed. The Chief Justice alone resolves any questions regarding the application and interpretation of this manual and the underlying statutes. The Administrative Office of the Courts provides staff support for all nominating commissions. A legislator may not be a member of a judicial nominating commission.

Commissions are comprised of lawyer and non-lawyer members to ensure the participation of interested civic and community leaders apart from the legal community. Lawyer commission members have an obvious interest in the selection of quality judges apart from their status as citizens. Non-lawyer commission members serve an important role in the nomination process by representing the interests of the community at large.

All members of the commission appointed by the governor are voting members, and all members of the commission appointed by the governor must reside in the judicial district they serve. The commissioners are limited to a single four year term. Commissioners are not paid for their work, but they may receive reimbursement for any necessary expenses incurred in the performance of their duties.

VI. The Application Process

A. Notice of Vacancy

The notice of vacancy is in the form of a press release. The notice includes the jurisdiction of the court (e.g., District Court for the Third Judicial District comprised of Salt Lake, Summit and Tooele counties), the constitutional minimum requirements for judicial office (see Section 7, Evaluation Criteria), a brief description of the work of the court, the method for obtaining application forms, the application deadline, the names and

cities of residence of commission members, when available (if appointments are pending, this will also be indicated), and the method for submitting oral or written testimony at the organizational meeting.

The notice is prepared by the Administrative Office of the Courts and is released to the Salt Lake Tribune, the Deseret News, and newspapers with circulation within the geographic venue of the court. Press releases are also provided to the network affiliated television stations in Salt Lake City.

The notice of vacancy is also made available to the Utah State Bar Association and any local bar associations within the geographic venue of the court for publication in the newsletters of those organizations. The bar associations may further distribute the notice of vacancy.

In addition, the notice of vacancy is distributed to the governor's office, the president of the senate, legislators from the geographical area where the vacancy exists, county clerks, county attorneys, all state and federal court offices, the United States Attorney's office and local professional publications.

Because the Utah Constitution requires that a justice of the Supreme Court reside in Utah for five years and any other judge reside in Utah for three years immediately preceding appointment, there is no circulation of the notice outside the state.

B. Applications

Application forms and the required waivers are available from and should be submitted to the Administrative Office of the Courts, Attention: Judicial Nominations, P.O. Box 140241, Salt Lake City, Utah 84114-0241 or at Scott M. Matheson Courthouse, 450 South State Street, Suite N31. Application and waiver forms are available on preprinted forms and in an electronic format.

The application package consists of the following:

- a) An original and eight copies of the application form.
- b) An original and eight copies of the applicant's resume.
- c) A check or money order payable to the Administrative Office of the Courts for \$8.70 to cover the cost of a credit check.
- d) A waiver of the right to review the records of the commission.
- e) A waiver of confidentiality of records.
- f) A one paragraph summary of professional qualifications that will be made available to the public if the applicant's name is released for public comment prior to nomination.

The waiver of confidentiality pertains to records which are the subject of investigation by the commission.

If the applicant has applied for another judicial position within the prior year, the applicant may submit copies of the application package from the previous vacancy with a letter of interest that includes a summary of any changes to the previous application package and a check or money order for the credit check.

1. Adverse References

The application provides space for listing references. However, letters of recommendation are not submitted by the applicant. The judicial nominating commission selects from among the references listed, and the commission or its staff contacts the references. The applicant must list as a reference all lawyers adverse to

the applicant in litigation or negotiations or 20 such lawyers, whichever is less. Lawyers engaged in a non-adversarial practice, such as judges, law professors, and consultants, may omit the listing of adverse lawyers.

2. Additional References

The applicant may list any lawyer with whom the applicant has had a substantial professional interaction within the previous two years. Professional interaction”should be broadly interpreted with emphasis on the identification of opposing counsel as references. Substantial interaction”should be interpreted to include lawyers with whom the applicant has had sufficient interaction that the reference can render an informed opinion regarding the applicant’s abilities as a lawyer and judge. This may include lawyers in the applicant’s law firm, opposing counsel in contested cases, and counsel for opposing parties in business or other negotiations outside of contested cases.

Lawyers engaged in a non-adversarial practice, such as judges, law professors, and consultants, must list at least 20 references under this paragraph.

3. Reference Letters

The staff person assigned to the nominating commission randomly selects two of the references listed under paragraph (1), two of the references listed under paragraph (2), and all of the other references listed on the application form and requests the references to complete and submit a standard reference letter approved by the Judicial Council. If the candidate lists no references under (1), then the staff person assigned to the commission randomly selects four references from among those listed under (2). The commission may designate other references to be contacted either by the standard reference letter or by other means.

4. Deadline

The deadline for filing applications is established by the published notice. The minimum application period is 30 days, but the notice of vacancy may provide for an extended application period. If fewer than nine applications are received, the vacancy must be announced for an additional 30 days.

The application is considered submitted upon the receipt by the Administrative Office of the Courts of all required application materials listed above. The Administrative Office of the Courts is not responsible for applications mailed but not delivered.

A notice of receipt is sent to the applicant. If the application is incomplete, the applicant is notified of the deficiency. The application may not be considered timely filed unless the deficiency is corrected before the application period closes.

C. Recruitment

If commissioners wish to solicit individuals to apply for judicial vacancies they may do so directly or request that staff from the Administrative Office of the Courts solicit applications of specific individuals by writing a letter indicating that the individual’s name has been referred as a potential judicial applicant and inviting the individual to submit an application. If a third party presents the name of a potential applicant to a commissioner, the same procedure should be followed. Staff members should not personally solicit applications without a request by a commissioner.

D. Pre-screening by Staff

After the expiration of the filing deadline, the staff person assigned to a nominating commission reviews the applications to screen out those applicants not meeting the minimum constitutional qualifications for office. A list of any applicants identified as not meeting the minimum qualifications and the deficiency is provided to all commissioners. Those applicants not successfully passing the pre-screening are advised by letter from the staff.

E. Distribution of Application Materials

After the close of the application process, the staff to the commission delivers a copy of each application and resume and a list of all applicants in alphabetical order to the commissioners. All application materials are returned to the staff of the commission at the close of the nomination process in accordance with the section governing records beginning on page 11.

VII. Organizational Meeting

A. Introduction

Convening of the organizational meeting of the commission starts the 45-day time limit in which the commission must make its nominations to the Governor. The date, time, and place of the organizational meeting are published as a part of the notice of the vacancy or in a separate public notice. Commissioners are notified individually of the commission's first meeting prior to the public notice if possible. The organizational meeting should be held as soon as practicable after the close of the application deadline.

The importance of this initial meeting cannot be overstated. If the commission is not well organized, it likely will face problems later. The least of these problems is the inefficient use of limited time. More serious problems such as breaches of ethics and confidentiality or disputes over voting procedures may develop. The organizational meeting is used to anticipate these problems before they occur.

The commission should accomplish five things during the organizational meeting. During the public portion of the meeting:

- a) The commission should discuss issues of ethics and legal obligations.
- b) The commission should consider any administrative or procedural questions.
- c) The commission should develop a realistic time table in which to accomplish its many tasks.
- d) The commission should receive oral and written testimony from the public about community needs, the qualifications for the judicial office, and the nominating process, but not about individual applicants.

After the public portion of the meeting, the commission should go into executive session to discuss the qualifications of applicants and make an initial screening of the candidates. This initial screening of applicants by the commission is based upon the information contained in the application materials. The process for screening by the commission is explained beginning on page 210.

B. Conduct of Meetings

The chair of each nominating commission presides at all meetings and ensures that each commissioner has the opportunity to be a full participant in the commission process. The Chief Justice is a full participant in the meeting but does not vote. The Chief Justice has the responsibility to ensure that the procedures established by this manual and by statute are followed. The Chief Justice resolves any questions regarding the application and interpretation of this manual and the statute. All commission members shall have the opportunity to question applicants and to discuss the qualifications of applicants. In questioning applicants and discussing the qualifications of applicants, the chair shall speak last and the Chief Justice shall speak next to last.

C. Ethical and Legal Obligations

The organizational meeting is the appropriate time and place to address any issues regarding commission ethics that may be of concern. It is far better to try to anticipate problems and avoid them than to try to solve them once they occur. The goal of commissioners should be to avoid not only impropriety itself, but also the appearance of impropriety.

Confidentiality. The names of the proposed nominees are released to the public for the purpose of comment prior to submission to the governor, and the application materials and investigation reports for the nominees are forwarded to the governor. Otherwise, the policy in Utah is to maintain the confidentiality of all applicants and of all investigation sources. Subject only to the responsibility to report violations of the law and breaches of professional ethics, information provided by the applicant and information gathered as a result of the investigation is not disclosed. However, if an applicant is selected as a nominee, the application package of the nominee and the results of any investigation, including information from investigation sources, are forwarded to the governor. The application and investigation results are not otherwise disclosed by the commission.

Relationship to the Applicant. Perhaps one of the most common problems faced by nominating commissions is that some commissioners have a business, professional, or personal relationship to one or more of the applicants. Commissioners are required to disclose to the commission the existence and nature of such relationships, including any adverse relationship. These declarations should be made prior to screening the applicants. If an applicant is a commissioner's spouse or a person within the third degree of relationship to a commissioner, (grandparents; parents or parents-in-law; aunts or uncles; children, nieces and nephews and their spouses) that commissioner must disqualify him/herself from the nominating commission process. If a commissioner declares some other type of relationship with an applicant, the other commission members must decide if that relationship constitutes a conflict of interest. If they so decide, the commissioner disclosing the relationship must disqualify him/herself from the nominating commission process. If the other commission members decide, by a majority vote, that the relationship does not constitute a conflict of interest, the commissioner disclosing the relationship may participate in the process. Only declarations which are determined by the commission to pose a conflict of interest are recorded in the minutes of the meeting. If a commissioner is recused for a conflict of interest or is otherwise unable to serve, the Governor appoints a new commissioner. The commissioner may continue to serve until a successor is appointed, but the commissioner may not vote for so long as the grounds for recusal continue. If the grounds for recusal are eliminated, the commissioner shall participate fully in the nomination process.

Solicited Information. Commission members should inquire on their own regarding the qualifications of judicial applicants. Commissioners should seek information from any source likely to provide insight into the qualifications and ability of individual applicants to serve in the judiciary, including but not limited to attorneys, judges, members of the executive and legislative branches of government, business associates, neighbors and acquaintances. The commission should not solicit information from clients of applicants, unless the applicant has approved the solicitation. The names of applicants are formally confidential during this

phase so inquiries should be discreet. However, it obviously will be necessary to reveal the name of an applicant when inquiring of others about the applicant. Information so gathered will be helpful to the commission in the process of its deliberations.

Unsolicited Information. The commission may receive unsolicited information or statements from third parties supporting or opposing an applicant. These should be received, considered, and, if appropriate, investigated. The response to the writer or caller should be uniform. Explain the impartial procedures that all applicants must complete and thank the individual for the information.

Contact with an Applicant. Commissioners should refrain from discussion with an applicant about his/her application. Feedback on interview performance should not be provided by commission or staff members to applicants.

Commissioner Bias. All people have particular philosophies and viewpoints. Commissioners can only realize that these biases exist and make every effort to ensure that they do not cloud the decision making process.

Legal Requirements. Sections of the Utah Constitution and Code applicable to the nomination and election of judges are provided to commission members.

D. Administrative Issues

The organizational meeting should be used to answer any questions or concerns of the commissioners. A few issues are outlined here.

Reimbursement of Expenses. Commissioners are entitled to be reimbursed for all actual and necessary expenses incurred in the course of their duties as commissioners. Submit mileage records and expense receipts to the staff person assigned to the commission at or soon after the final meeting of the commission. Note, however, that if the work of the commission begins in one fiscal year and continues into the next fiscal year, expenses must be reimbursed with funds from the year in which the expenses were incurred. Requests for reimbursement of expenses incurred during one fiscal year must be submitted no later than July 20 of the next fiscal year. The fiscal year ends June 30.

Records. The Administrative Office of the Courts serves as staff to each of the nominating commissions. Forms are available from and all records of the commissions are maintained in that office. The notes of the commissioners are their own and are not filed with the Administrative Office of the Courts.

Summary minutes only, and not verbatim minutes, are maintained of all commission meetings including interview meetings and voting meetings. The minutes include:

- a) The date, time, and place of the meeting.
- b) A list of the commissioners present and a list of those absent or excused.
- c) A list of staff members present.
- d) A general description of the nature of the business to be conducted.
- e) A general description of the decisions made.
- f) Any declarations by commissioners of a relationship, interest, or bias concerning any applicant.
- g) A record of the total tally of all votes, but not the vote of individual commissioners.
- h) Written statements submitted to the commission regarding issues facing the judiciary.
- i) Any other matter desired by the commission to be recorded.

All records of the commission are maintained by the personnel division of the Administrative Office of the Courts, but are not subject to public disclosure. The records are maintained until the appointee of the governor takes the oath of office. The records are then destroyed.

When the commission must fill multiple vacancies, applicants for the same court are not ranked or identified with any particular vacancy. Rather, the applicants are treated as a pool. For example, if there are three vacancies, the commission does not submit to the Governor designated nominees for each vacancy. Rather, the commission submits a pool of nominees to the Governor without any matching of vacancies to a set of nominees.

Quorum. Four commissioners must be present to conduct any business. Commissioners may be present through electronic means such as telephone or video conferencing. If a written ballot is required of a commissioner present through electronic means, the commission may submit the vote by fax, electronic mail, or other electronic means. The commission should take steps to secure the confidentiality of debate and votes made by electronic means.

E. Timetable

The commission should develop a timetable of specific dates for the completion of the various steps in the nomination process. Submitting names to the Governor in 45 days is the final deadline. The commission should establish a deadline for each interim step in the process. Including the organizational meeting, commissioners will usually meet formally three to four times.

F. Public Testimony

The public portion of the organizational meeting is used to develop oral and written testimony about issues of local concern, the general qualifications of judges, and constructive recommendations to the Judiciary. Statements concerning particular applicants or cases are prohibited. It is important at the initial meeting to develop a good sense of the interests of the communities served by a court. This is especially difficult in Utah where the jurisdiction of a court usually covers several counties.

The procedure for submitting written statements or a request for time to deliver an oral statement at the organizational meeting is as follows. Any interested person or organization may submit written statements to the Administrative Office of the Courts. A written statement may be accompanied by a request for time to present the statement orally to the commission. Requests for time to present an oral statement are not preferred unless accompanied by the written statement. The chair of the commission may permit a person to present an oral statement without submitting a written statement. A maximum time limit for oral statements is five minutes. The presiding judge of the court for which the judicial vacancy exists is invited to speak to the commission without submitting a written statement.

The chair of the commission retains the discretion to deny a written request for oral testimony only to ensure the orderly conduct and timely completion of the public portion of the organizational meeting. If permission to provide oral testimony is granted, the person requesting permission is notified by staff in the Administrative Office of the Courts. All written statements become a part of the record of the commission. The substance of the statement and identification of the author are publicly disclosed at the organizational meeting. The statement may be read verbatim.

G. Initial Screening by Commission

A screening process is usually needed to reduce the number of applicants to a manageable number for purposes of further investigation and selecting interviewees. The initial screening should occur at the organizational meeting and is based upon the applicants' application and resume, randomly selected references, and other application materials.

The objective of the commission in screening applicants is not to retain for further investigation and interviews all applicants who may conceivably be qualified but to retain enough applicants so as to be reasonably certain that the best qualified applicants are among them, given the information available to the commission at the time, the number of vacancies to be filled, and the overall quality of the applicant pool. The commission members review the application materials available, discuss the qualifications of the applicants, compare the information with the evaluation criteria, and vote to retain or eliminate an applicant. Depending upon the size and relative qualifications of the applicant pool, the commission may complete the screening at the organizational meeting, or the commission may complete the screening at a subsequent meeting at which the results of the investigation are available.

Voting is by confidential ballot. Each commissioner is provided a ballot with the names of all applicants to be voted upon in alphabetical order. Next to each applicant's name is a space designated 'yes' and a space designated 'no.' The commissioner casts an affirmative or a negative vote for each applicant. The votes are tallied by the staff person and chair of the commission. All applicants receiving at least four affirmative votes shall be retained for further consideration. If after voting the commission determines there are too many applicants remaining given the number of vacancies and the overall quality of the applicant pool, the commission may further discuss the qualifications of applicants and conduct another round of voting. For each applicant retained after screening is concluded, the commission identifies the references listed by the applicant to be contacted by staff.

The total vote tally, but not the vote of individual commissioners, is recorded in the minutes of the commission. After the total vote tally is verified and recorded, the voting ballots are destroyed.

Those applicants not selected for investigation and a possible interview shall be notified by the commission staff.

VIII. Investigation of Screened Applicants; Further Screening

A. Summary Staff Investigation of Applicants

After screening out those applicants not meeting the minimum constitutional requirements, and after initial screening by the commission, the Administrative Office of the Courts conducts a summary investigation of all remaining applicants. The commission may conduct a further investigation, or may direct staff to do so, of any applicant remaining after screening.

As a part of the summary investigation, the staff person shall:

- a) Order a summary credit check of the applicant.
- b) Contact the references listed by the applicant and designated by the commission for a recommendation.

- c) Contact the disciplinary committee of any state bar of which the applicant is or was a member to determine the existence of any disciplinary action.
- d) Contact the judicial disciplinary agency of any jurisdiction where the applicant was a judge to determine the existence of any disciplinary action.
- e) Contact the Bureau of Criminal Identification to determine whether the applicant has any police record.

An applicant's personal physician may be contacted and asked to disclose the particulars of an applicant's medical history only if the sound mental health of an otherwise qualified applicant becomes an issue of concern to the commission. Any inquiry will be limited to information necessary to resolve the particular concern.

Because an applicant may be screened from further consideration based on the results of the investigation, the applicant may have no opportunity to rebut claims made during the investigation. Therefore, it is essential that the investigation be thorough and without errors.

B. Further Investigation by Staff and Commission

The commission may direct a more in-depth background investigation be conducted by the staff of the Administrative Office of the Courts on any applicant remaining after screening. Staff conducting the investigation should accomplish the following:

- a) Coordinate a background check with law enforcement agencies to determine if the applicant has been or is the subject of a criminal investigation or has any record of past criminal activity.
- b) Contact current or former employers, partners, or associates.
- c) Contact any listed professional and civic organizations to determine the level of the applicant's activity.
- d) Contact any references listed by the candidate.
- e) Follow up on any areas of concern raised by any member of the nominating commission or otherwise revealed during the screening process.

In addition to any investigation conducted by staff, commission members should inquire on their own regarding the qualifications of judicial applicants. Commissioners should seek information from any source likely to provide insight into the qualifications and ability of individual applicants to serve in the judiciary, including but not limited to attorneys, judges, members of the executive and legislative branches of government, business associates, neighbors and acquaintances. The commission should not solicit information from clients of applicants, unless the applicant has approved the solicitation. The names of applicants are formally confidential during this phase so inquiries should be discreet. However, it obviously will be necessary to reveal the name of an applicant when inquiring of others about the applicant.

C. Writing Samples

Written communication skills are important for judges, especially at the appellate level. In order for the commission to evaluate these skills, each applicant selected for an interview may be asked to submit a written response to a question selected by the chair of the commission from three questions prepared by staff on a judicial or legal matter. The written response will be limited to a maximum of two pages.

D. Report of Investigation Results

Prior to the meeting for the further screening of applicants and the selection of interviewees, or, if no subsequent screening is needed to reduce the applicant pool further, prior to the meeting for interviews, each commissioner receives the following for each applicant:

- a) A copy of the application form and resume.
- b) A summary report of information contained in the application and information gathered as a result of the staff investigation. Credit check information is summarized orally with the nominating commission. The summary report is intended only as a tool for the commissioners in organizing the often voluminous information. The report contains neither recommendations nor evaluations concerning the applicant.
- c) Copies of reference letters received.
- d) Copies of all summary performance evaluations on applicants who are sitting judges that would be made public if the judge were standing for election.

E. Further Screening and Selection of Interviewees

If there is a second screening of applicants before interviews, the commission screens the applicants based upon the results of investigations. The commission should conduct the voting for this subsequent screening of applicants in the same manner as the initial screening.

IX. Evaluation Criteria

A. Constitutional and Statutory Minimum Requirements

Age. Under Article VIII, Section 7 of the Utah Constitution, Supreme Court justices must be at least 30 years old, and judges of other courts of record must be at least 25 years old.

Residency. All justices and judges must be United States citizens. Supreme Court justices must be Utah residents for at least five years immediately preceding selection. Judges of other courts of record must be residents of Utah for at least three years immediately preceding selection. If geographic divisions are provided for any court, judges of that court must be willing to reside in the geographic division for which they are selected. Currently, the law provides for geographic divisions for the district and juvenile courts. There are no geographic divisions for the Supreme Court or the Court of Appeals.

Practice of Law. Under the Constitution, all justices and judges must be admitted to practice law in Utah, but need not actually engage in the practice of law.

Restricted Activities. Under the Constitution, justices and judges may not hold any elective nonjudicial public office, or hold office in a political party. Section 78-7-2 of the Utah Code establishes further restrictions on the activity of judges.

No justice or judge of any court of record may, during his term of office:

- (1) practice law or have a partner engaged in the practice of law;
- (2) hold office in or make any contribution to any political party or organization engaged in political activity; or

(3) use, in his efforts to obtain or retain judicial office, any political party designation, reference or description.”

B. Qualities of Judges

Evaluation criteria are essential if the commission is to have a standard by which to judge applicants. Without evaluation criteria, the nomination process becomes little more than a contest of personal favorites among the commissioners. Yet evaluation criteria contain some bias. A criterion that emphasizes trial experience may overlook qualified applicants who happen not to be litigators. A criterion that emphasizes a history of professional advancement may overlook qualified women and minorities who face greater obstacles to advancement. Commissioners should determine prior to the screening or interviewing of applicants how they personally want to weigh the various criteria. However, one criterion is clearly constitutionally impermissible in Utah: political party affiliation. Both the Judicial Article and the Utah Code state that *selection of judges shall be based solely upon consideration of fitness for office without regard to any partisan political consideration.*”

The following criteria for evaluating applicants are derived from the American Bar Association's Guidelines for Reviewing Qualifications of Applicants for State Judicial Office, which offer some guidance for determining fitness for office. Following the ABA guidelines are some additional considerations.

1. American Bar Association Guidelines

Introduction

These guidelines are intended for use by bar association committees and judicial nominating commissions which are evaluating applicants for state and local judicial office. It is assumed that the evaluators desire to recommend to the electorate or to the appointing authority the applicants who are most qualified by virtue of merit.

The guidelines attempt to identify those characteristics to be sought after in the judicial applicants. They attempt to establish criteria for the prediction of successful judicial performance. The identified traits are not mutually exclusive and cannot be wholly separated one from another. The outlined areas have been selected as essential for inquiry in considering all applicants for judicial office. With the exception of integrity, which is always indispensable, the degree to which the characteristics should be present in any particular applicant may vary in relation to the responsibility of the office.

These guidelines are not intended to deal with methods or procedures for judicial selection; nor are they intended to provide specific operating rules for the commissions and committees. The guidelines are not intended as a definitive review of the qualifications of sitting judges when being considered for retention or evaluation, since judicial experience will then provide important additional criteria which are treated elsewhere.

It is hoped that the use of these guidelines, if made known to the public and the press, will enhance the understanding and respect to which the judiciary is entitled in the community being served. The ultimate responsibility for selecting the judiciary is in the appointing power of any given judicial system. The function of these guidelines is to present minimum criteria for appointment; the more rigorous the criteria the better the quality of the judiciary.

1. Integrity. An applicant should be of undisputed integrity.

The integrity of the judge is, in the final analysis, the keystone of the judicial system; for it is integrity which enables a judge to disregard personalities and partisan political influences and enables him or her to base decisions solely on the facts and the law applicable to those facts. It is, therefore, imperative that a judicial applicant's integrity and character with regard to honesty and truthfulness be above reproach. An individual with the integrity necessary to qualify must be one who is able, among other things, to speak the truth without exaggeration, admit responsibility for mistakes and put aside self-aggrandizement. Other elements demonstrating integrity are intellectual honesty, fairness, impartiality, ability to disregard prejudices, obedience to the law and moral courage.

An applicant's past personal and professional conduct should demonstrate consistent adherence to high ethical standards. The evaluator should make inquiry of judges before whom the applicant has appeared and among other members of the bar as to whether or not an applicant's representations can be relied upon. An applicant's disciplinary record, if any, should be considered. Hence, an applicant should waive any privilege of confidentiality, so that the appropriate disciplinary body may make available to the evaluator the record of disciplinary sanctions imposed and the existence of serious pending grievances. The reputation of the applicant for truthfulness and fair dealing in extra-legal contexts should also be considered. Inquiry into an applicant's prejudices that tend to disable or demean others is relevant. However, since no human being is completely free of bias, the important consideration is that of whether or not the applicant can recognize his or her own biases and set them aside.

2. Legal Knowledge and Ability. An applicant should possess a high degree of knowledge of established legal principles and procedures and have a high degree of ability to interpret and apply them to specific factual situations.

Legal knowledge may be defined as familiarity with established legal principles and evidentiary and procedural rules. Legal ability is the intellectual capacity to interpret and apply established legal principles to specific factual situations and to communicate, both orally and in writing, the reasoning leading to the legal conclusion. Legal ability connotes also certain kinds of behavior by the judge such as the ability to reach concise decisions rapidly once he or she is apprised of sufficient facts, the ability to respond to issues in a reasonably unequivocal manner and to quickly grasp the essence of questions presented.

Legal knowledge and ability are not static qualities, but are acquired and enhanced by experience and the continual learning process involved in keeping abreast of changing concepts through education and study. While an applicant should possess a high level of legal knowledge, and while a ready knowledge of rules of evidence is of importance to judges who will try contested cases, an applicant should not normally be expected to possess expertise in any particular substantive field. More important is the demonstration of an attitude reflective of willingness to learn the new skills and knowledge which will from time to time become essential to a judge's performance and of a willingness to improve judicial procedure and administration.

A review of an applicant's academic distinctions, participation in continuing legal education forums, legal briefs and other writings and reputation among judges and professional colleagues who have had first-hand dealings with the applicant will be helpful in evaluating knowledge and ability.

3. Professional Experience. An applicant should be a licensed, experienced lawyer.

An applicant should be admitted to practice law in the jurisdiction. The length of time that a lawyer has practiced is a valid criterion in screening applicants for judgeships. Such professional experience should be long enough to provide a basis for the evaluation of the applicant's demonstrated performance and long enough to ensure that the applicant has had substantial exposure to legal problems and the judicial process.

It is desirable for an applicant to have had actual trial experience, as an attorney, a judge or both, beyond general litigation experience. This is particularly true for an applicant for the trial bench.

The extent and variety of an applicant's experience should be considered in light of the nature of the judicial vacancy that is being filled. Although substantial trial experience is desirable, other types of legal experience should also be carefully considered. An analysis of the work performed by the modern trial bench indicates that, in addition to adjudication, many judges perform substantial duties involving administration, discovery, mediation and public relations. A private practitioner who has developed a large clientele, a successful law teacher and writer, or a successful corporate, government or public interest attorney all may have experience which will contribute to successful judicial performance. Outstanding persons with such experience should not be deemed unqualified solely because of lack of trial experience. The important consideration is the depth and breadth of the professional experience and the competence with which it has been performed, rather than the applicant's particular type of professional experience.

For an applicant for the appellate bench, professional experience involving scholarly research and the development and expression of legal concepts is especially desirable.

4. Judicial Temperament. An applicant should possess a judicial temperament, which includes common sense, compassion, decisiveness, firmness, humility, open-mindedness, patience, tact and understanding.

Judicial temperament is universally regarded as a valid and important criterion in the evaluation of an applicant. There are several indicia of judicial temperament which, while premised upon subjective judgment, are sufficiently understood by lawyers and non-lawyers alike to afford workable guidelines for the evaluator.

Among the qualities which comprise judicial temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion and humility. Because the judicial function is essentially one of facilitating conflict resolution, judicial temperament requires an ability to deal with counsel, jurors, witnesses and parties calmly and courteously, and the willingness to hear and consider the views of all sides. It requires the ability to be even-tempered, yet firm; open-minded, yet willing and able to reach a decision; confident, yet not egocentric. Because of the range of topics and issues with which a judge may be required to deal, judicial temperament requires a willingness and ability to assimilate data outside the judge's own experience. It requires, moreover, an even disposition, buttressed by a keen sense of justice which creates an intellectual serenity in the approach to complex decisions, and forbearance under provocation. Judicial temperament also implies a mature sense of proportion; reverence for the law, but appreciation that the role of law is not static and unchanging; understanding of the judge's important role in the judicial process, yet recognition that the administration of justice and the rights of the parties transcend the judge's personal desires. Judicial temperament is typified by recognition that there must be compassion as the judge deals with matters put before him or her.

Factors which indicate a lack of judicial temperament are also identifiable and understandable. Judicial temperament thus implies an absence of arrogance, impatience, pomposity, loquacity, irascibility, arbitrariness or tyranny. Judicial temperament is a quality which is not easily identifiable, but which does not wholly evade discovery. Its absence can usually be fairly ascertained.

Wide-ranging interviews should be undertaken to provide insight into the temperament of a judicial applicant.

5. Diligence. An applicant should be diligent and punctual.

Diligence is defined as a constant and earnest effort to accomplish that which has been undertaken. While diligence is not necessarily the same as industriousness, it does imply the elements of constancy, attentiveness, perseverance, and assiduousness. It does imply the possession of good work habits and the ability to set priorities in relation to the importance of the tasks to be accomplished.

Punctuality should be recognized as a complement of diligence. An applicant should be known to meet procedural deadlines in trial work and to keep appointments and commitments. An applicant should be known to respect the time of other lawyers, clients and judges.

6. Health. A candidate should be in good health.

Good health embraces a condition of being sound in body and mind relative to the extraordinary decision making power vested in judges. Physical handicaps and diseases which do not prevent a person from fully performing judicial duties will not be a cause for rejection of a candidate. However, any serious condition which would affect the candidate's ability to perform the duties of a judge may be further investigated by the evaluator. The evaluator may require a candidate to provide a physician's written report of a recent thorough medical examination addressing the condition of concern.

Good health includes the absence of erratic or bizarre behavior which would significantly affect the candidate's functioning as a fair and impartial judge. Addiction to alcohol or other drugs is of such an insidious nature that the evaluator should affirmatively determine that a candidate does not presently suffer from any such disability.

The ability to handle stress effectively is a component of good mental health. A candidate should have developed the ability to refresh himself or herself occasionally with non-work-related activities and recreations. A candidate should have a positive perception of his or her own self-worth, in order to be able to withstand the psychological pressures inherent in the task of judging.

The evaluator should give consideration to the age of a candidate as it bears upon health and upon the number of years of service that the candidate may be able to perform.

7. Financial Responsibility. An applicant should be financially responsible.

The demonstrated financial responsibility of an applicant is one of the factors to be considered in predicting the applicant's ability to serve properly. Whether there have been any unsatisfied judgments or bankruptcy proceedings against an applicant and whether the applicant has promptly and properly filed all required tax returns are pertinent to financial responsibility. Financial responsibility demonstrates self-discipline and the ability to withstand pressures that might compromise independence and impartiality.

8. Public Service. Consideration should be given to an applicant's previous public service activities.

Participation in public service and pro bono activities adds another dimension to the qualifications of the applicant. The degree of participation in such activities may indicate social consciousness and consideration for others. The degree to which bar association work provides an insight into the qualifications of the

applicant varies in each individual. Significant and effective bar association work may be seen as a favorable qualification.

The rich diversity of backgrounds of American judges is one of the strengths of the American judiciary, and an applicant's non-legal experience must be considered together with the applicant's legal experience. Experience which provides an awareness of and a sensitivity to people and their problems may be just as helpful in a decision making process as a knowledge of the law. There is, then, no one career path to the judiciary. A broad, non-legal academic background, supported by varied and extensive non-academic achievements are important parts of an applicant's qualifications. Examples of such non-legal experience are involvement in community affairs and participation in political activities, including election to public office. The most desirable applicant will have had broad life experiences.

There should be no issue-oriented litmus test for selection of an applicant. No applicant should be precluded from consideration because of his or her opinions or activities in regard to controversial public issues. No applicant should be excluded from consideration because of race, creed, sex or marital status.

While interviews of applicants may touch on a wide range of subjects in order to test an applicant's breadth of interests and thoughtfulness, the applicant should not be required to indicate how he or she would decide particular issues that may arise on litigated cases. However, an applicant's judicial philosophy and ideas concerning the role of the judicial system in our scheme of government are relevant subjects of inquiry.

2. Other Considerations for Qualification

In addition to the ABA guidelines, the commissioners may wish to consider the following in analyzing the qualifications of an applicant for judicial office.

Impartiality. A judge must be able to determine the law and sometimes the facts of a dispute objectively and impartially. Applicants should be challenged on their ability to make the transition from advocate to arbiter, on their ability to hear and consider all sides of an issue, and on their ability to put aside prejudice and bias.

Industry. Applicants must demonstrate a willingness to dedicate themselves to diligent, efficient, and thorough work. Work habits differ; work techniques vary; but rising court caseloads demand industry of judges. This means the ability to manage time efficiently, to persevere against obstacles, to prepare thoroughly and punctually, and to resolve issues concisely and decisively.

Age. A justice of the Supreme Court must be at least 30 years old. A judge of any other court of record must be at least 25 years old. Otherwise, there are no restrictions on the age of nominees to judicial office. Applicants should not be judged by their age alone. But they may be judged by the qualifications that may wax or wane with age: maturity, stability, legal skills, health, vitality.

Juvenile Court Judges. Juvenile court judges must deal with a very special segment of our society, our children. It has long been the policy in Utah to select judges for the juvenile court that demonstrate a special interest in, understanding of, and experience with the issues and problems facing children and families and the control of the crimes of juveniles.

Trial Court Judges. Substantial trial experience as an attorney, a judge, or both is desirable. This includes the preparation and presentation of matters of proof in an adversarial setting for practicing attorney applicants, or the hearing, ruling and decision-making experience of a sitting judge applicant. However,

litigation experience should not be overemphasized. The modern day trial judge must also be an able administrator and mediator.

Appellate Court Judges. Because of the collegial decision making process on the appellate bench, it is important that judges be able to understand and respect differing opinions without personal rancor. A good appellate court judge should be able to give and receive criticism of opinions and arguments without giving or taking personal offense. Appellate court judges should have well developed research and writing skills and backgrounds with broad experience.

Diversity on the Bench. When deciding among applicants whose qualifications appear in all other respects to be equal, it is relevant to consider the background and experience of the applicants in relation to the current composition of the bench for which the appointment is being made. The idea is to promote a judiciary of sufficient diversity that it can most effectively serve the needs of the community.

X. The Interview

A. Scheduling Interviews

After the interviewees are selected, the commission develops an interview schedule and should prepare questions for the interviews. This may be done at the same meeting in which the interviewees are selected or at an intervening meeting before the interviews begin.

Depending on the number of applicants, interviews should be completed in one day or on successive days. The number of intervening days between interviews should be kept to a minimum. It may be necessary for the commission to conduct some interviews in the evening. The interviews should be scheduled to include about ten minutes between interviews to review the qualifications of the applicant, if desired. Interviews should last about 20 to 30 minutes per applicant. This means that at least one-half hour per applicant should be scheduled.

Each interview is conducted in a similar fashion. The chair briefly introduces the applicant to the commissioners. The applicant is given several minutes to make an opening statement, if desired, which should include a statement of reasons for seeking the office. The commissioners then conduct the questioning. At the end of the questioning the applicant is given several minutes to make a closing statement.

Interviewees are selected for time slots by the staff on a random basis. This avoids any accusation that a particular applicant was given a favored time slot.

Once set, the interview schedule is firmly fixed. Changes in the interview schedule lead only to scheduling difficulties and confusion. Rarely will any interview schedule satisfy all of the applicants, so the initial random schedule should not be changed except in extreme circumstances. The Administrative Office of the Courts is responsible for notifying the applicants of the date, time, location, and format of the interview.

B. Preparation for Interviews

Interviews are more productive if the commissioners are well-prepared. Prepare the questions beforehand. Some questions are asked of all applicants for all judgeships. Some questions might be asked only for a

particular applicant or vacancy. The investigation of applicants likely will lead to questions designed for a particular applicant.

Determine the order of questions beforehand. Every commissioner should have the opportunity to ask questions. Generally, the questioning should rotate through commissioners. The chair should ask questions last. The Chief Justice should ask questions next to last.

Determining the questions and their order does not mean that the commissioners are prohibited from following up an answer with a more particularized question. The format of the interviews should be flexible enough to pursue an unanticipated line of questioning. Preparing the questions and their order beforehand helps in returning the interview to its original course.

C. Suggested Questions

Applicants must be treated fairly, but commissioners are encouraged to conduct aggressive questioning of the potential judges. Judges must frequently face the stress of decisions affecting the lives and property of other people. The commissioners have the responsibility to assess the ability of the applicant to resolve close questions under stress.

Phrasing of the questions is important. The commissioners may closely question the applicants concerning social issues, but the questions should be phrased to avoid opinion shopping or reducing the interview to a political interrogation. The questions should be phrased to elicit an applicant's knowledge and understanding of important issues.

Commissioners also should not hesitate to inquire about an applicant's qualifications for a position on the bench, including the applicant's health.

Each commission is responsible for developing its own set of questions suitable to the particular court and applicant. A few examples of possible questions follow. Not all questions may be applicable to every level of court.

Applicant's Skills, Experience, and Personal Traits

- ◆ How would you deal with an attorney who is:
 - ◇ unprepared?
 - ◇ argumentative?
 - ◇ late?
- ◆ What would be your most important contribution to the court?
- ◆ What do you anticipate will be your frustrations on the bench?
- ◆ What aspects of the judicial profession do you anticipate will be boring?
- ◆ What are your most important interests outside of your present work?
- ◆ Will you have to forgo any of these interests to keep up with the court's caseload?
- ◆ What elements in your background and training have prepared you to deal with:
 - ◇ the criminal law portion of the court's caseload?
 - ◇ the rights of women and minorities?
 - ◇ business, commercial, and regulatory issues?
 - ◇ family law issues?
- ◆ Will you be able to adjust your lifestyle to fit within the salary of a judge?

Applicant's General Judicial Philosophy

- ◆ Why do you want to be a judge?
- ◆ What characteristics and qualities do you think are important for a judge to possess?
- ◆ Do you have a particular philosophy of law?
- ◆ What is your view of the role of the Judiciary in society?
- ◆ To what extent should a judge consider political, social, and economic consequences in decisions?
- ◆ How should a court achieve an appropriate balance between stability and development in the law?

Applicant's View of the Court System

- ◆ What do you see as the strengths and weaknesses of Utah's criminal justice system?
- ◆ What do you see as the strengths and weaknesses of Utah's administration of justice in the environment, utilities, and other regulatory fields?
- ◆ How can the administration of justice be improved?
- ◆ How would you balance the concerns for court delay with the administration of justice in individual cases?
- ◆ Are there any changes you would like to see made:
 - ◇ in the types of cases litigated?
 - ◇ in the direction of the law either in general or in a particular area of the law?
 - ◇ in the operation of the court?

XI. Selection of Nominees

A. Order of Debate and Voting

After the interviews are completed, the commissioners should devote sufficient time to discuss the qualifications of the candidates. This deliberation may help the commission to form a consensus and facilitate the selection of nominees. Every commissioner should have the opportunity to participate in the debate. Generally, the debate should rotate through commissioners. The chair should participate in the debate last. The Chief Justice should participate next to last. The commission may conduct its debate, or further debate, before every round of voting.

Voting for the selection of nominees is the same as voting during the screening process. Any candidate receiving a majority of votes of voting commissioners present is selected as a nominee. The commission should thoroughly debate the qualifications of candidates prior to voting. The commission can reconsider its action on any candidate upon a majority vote to do so.

If after full deliberation the commission is unable to agree upon the number of nominees permitted or required by Section 20A-12-104(2) and Section 20A-12-105, the commission should further debate the qualifications of the candidates and conduct additional rounds of voting until commissioners agree upon the permitted or required number of nominees.

A nominating commission may not decline to nominate an applicant merely because: that commission or another declined to nominate the applicant to a previous vacancy; or because that commission or another nominated the applicant to a previous vacancy and the governor selected someone else.

The total vote tally, but not the vote of individual commissioners, is recorded in the minutes. After the vote tallies are verified and recorded, the ballots are destroyed.

B. Public Comment Regarding Nominees; Removal of Nominee

The names of the nominees are made public by the commission. The public release of the names of the nominees includes a statement that persons having comments to make regarding the candidates should provide a written statement addressed to the commission chair through the Administrative Office of the Courts. Statements must be received by the Administrative Office of the Courts within 10 days of the public release of names. A copy of the public release is sent to the Office of the Governor, the President of the Senate and the President of the Board of Bar Commissioners.

The commission meets to review any public comments not sooner than ten days after the public release of the names of the nominees. The commission shall provide a nominee with a copy of any written negative comment received and shall provide a nominee the opportunity to respond in person or in writing. The commission may conduct further interviews of any nominee. The commission may request further investigation of any candidate.

After consideration of any comments and the response of the nominee, the commission may remove a candidate from the list of nominees upon the vote of six members of the commission. The commission shall select another nominee from among interviewed candidates in the manner described in Paragraph A of this Section for voting upon nominees. The nomination of candidates to the governor is not final until the commission submits the candidates to the governor.

C. Submitting Nominees

The Appellate Court Nominating Commission shall submit at least five and not more than seven nominees for each vacancy. The Commissions for the trial courts shall submit at least three and not more than five nominees for each vacancy. If there are 15 or more applicants the trial court Commissions must submit five nominees unless fewer than five applicants obtain the required number of votes, in which case the Commission may submit four or three nominees.

Nominees are submitted to the Governor, the President of the Senate and the Office of Legislative Research and General Counsel, by letter from the chair of the commission. A copy of the letter is sent to each commission member. The letter should encourage the Governor to conduct further review of the nominees and to encourage public comments which could provide valuable insight to ensure that the best candidate is appointed. The successful candidates are notified individually. The list of nominees is made public by the commission. The public release of the names of the nominees should include a statement that individuals having comments to make regarding the nominees should contact the Governor's office. The application packages, including investigation reports, reference letters, and public comments, of each nominee are forwarded to the Governor.

Nominees are listed in alphabetical order without any indication of rank or preference and without any indication of the vote of the commission. Because the authority of the nominating commission ends with the nomination of candidates, it is important that there be no effort to influence or persuade the Governor in the appointment. Minority reports and expressions of personal feelings regarding nominees are inappropriate. The appointment authority belongs to the Governor, not to the commission. The Governor has the means to conduct an independent investigation of the nominees, and will select the nominee best qualified for the position. While commission members should not contact the Governor, they should feel free to respond to inquiries initiated by the Governor's office regarding the nominees.

If there are multiple vacancies, the names of nominees are not matched to any particular vacancy. Nominees are submitted as a pool from which the Governor makes the necessary appointments. The list of nominees is not ranked.

Applicants interviewed but not selected as nominees are notified of that fact by letter from the staff of the commission.

After the Governor has made a selection, the Senate must confirm the appointment. The president of the Senate may appoint a Senate Confirmation Committee. This committee may meet prior to the confirmation session to review the resume and qualifications of the Governor's selection and make a recommendation to the Senate for consent or rejection of the Governor's selection. The full Senate votes in a confirmation session to accept or reject the Governor's selection. Commission members may respond to inquiries from Legislators regarding the process used by the commission in selecting its nominees. Commission members should not initiate contact with Legislators to express personal feelings regarding the qualifications of the individual appointed by the Governor.